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RUEHLP/AMEMBASSY LA PAZ 2760
RUEHPE/AMEMBASSY LIMA 1036
RUEHSP/AMEMBASSY PORT OF SPAIN 3582
RUEHQT/AMEMBASSY QUITO 2851
RUEHSG/AMEMBASSY SANTIAGO 4064
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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000648

SIPDIS

ENERGY FOR CDAY AND ALOCKWOOD
NSC FOR JSHRIER

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TAGS: [EPET](#) [ENRG](#) [EINV](#) [ECON](#) [EFIN](#) [PREL](#) [VE](#)
SUBJECT: DUTCH BIT BITES THE DUST

REF: A. CARACAS 647
[1](#)B. 2007 CARACAS 01812
[1](#)C. 2007 CARACAS 02103
[1](#)D. 2007 CARACAS 01393

Classified By: Acting Economic Counselor Shawn E. Flatt for Reason 1.4
(D)

[1](#)1. (C) SUMMARY: Venezuela has revoked its bilateral investment treaty (BIT) with the Netherlands effective November 1, 2008. The BIT remains in force for 15 years for investments made before the date of revocation. Both ExxonMobil and ConocoPhillips are pursuing arbitration under the Dutch BIT. The Netherlands has offered to renegotiate the BIT but the BRV has shown no interest. Dutch officials were taken aback by the large number of international firms that are covered by the BIT. A prominent local law firm claims that companies operating under the BIT retain arbitration rights despite BRV attempts to limit or eliminate their rights. END SUMMARY

REVOCATION

[1](#)2. (C) Econoff met with Minister Elsa Geveke de da Costa and Commercial Advisor Mariana Nunez of the Royal Netherlands Embassy on May 9 to discuss the status of the Dutch BIT. Da Costa confirmed that Venezuela had revoked the BIT via diplomatic note. She also supplied Econoff with an informal English translation of a press release issued by the Netherlands Ministry of Economic Affairs on May 8. According to da Costa, the Economic Ministry had the lead on bilateral investment treaties.

[1](#)3. (SBU) The press release stated the BIT was scheduled to renew automatically for a period of 10 years. However, Venezuela indicated by diplomatic note that it was revoking the BIT. Since Venezuela acted within six months of the expiration of the treaty, the treaty will terminate on November 1, 2008. (NOTE: The press release did not give a

date for the diplomatic note. END NOTE).

¶4. (SBU) Revocation does not have any direct consequences for investments made before the date of revocation. The BIT remains in force for these investments for a period of 15 years. According to the press release, the Netherlands "is verifying the motives for revocation by Venezuela". The Netherlands has offered to renegotiate the treaty but the BRV has shown no interest to date.

¶5. (C) da Costa told Econoff that the small Dutch embassy in Caracas has been deluged with inquiries from international firms and law firms. She stated she and her staff were taken aback by the large number of international firms that are covered by the BIT. (NOTE: An official at CONAPRI, a public/private partnership that promotes investment in Venezuela told Economic Specialist on May 12 that he did not believe statistics existed on the origin of foreign investment or what BITs were utilized by individual companies. END NOTE) When Econoff opined that the BIT was viewed as one of the most liberal by the private sector, da Costa replied that was her impression as well. She stated the embassy planned to hold an information meeting with local and foreign law firms in the near future.

WHY NOW?

¶6. (C) COMMENT: Both da Costa and Nunez acted as if they were somewhat surprised that the BRV revoked the treaty.

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Energy Minister Ramirez stated publicly that the reason why Venezuela was revoking the BIT was that international companies in general and ExxonMobil in particular were taking unfair advantage of the treaty. The revocation does not come as a surprise to Post. Besides the usual provisions regarding national treatment and most favorable treatment, the treaty contains three provisions that are anathema to the BRV. First, article 5 guarantees that payments relating to an investment may be transferred in a "freely convertible currency, without undue restriction or delay". Given the private sector's problems obtaining foreign exchange from the CADIVI, the BRV foreign exchange agency (Reftel A), the BIT clearly gives firms under its protection a basis for claims against the BRV.

¶7. (C) In addition, the provisions regarding expropriation and nationalization also pose problems for the BRV, particularly in the ExxonMobil and ConocoPhillips arbitration cases (Reftels B and C). Both ExxonMobil and ConocoPhillips are pursuing arbitration under the BIT. Article 6 of the BIT requires just compensation that represents "the market value of the investments affected" immediately before nationalization or expropriation. The BRV has only offered ConocoPhillips and ExxonMobil book value as compensation for their expropriated assets. Article 6 also states compensation will include "interest at a normal commercial rate until the date of payment". Claimants under the BIT also have the right to receive payment in the currency of the country in which they are nationals or in any freely convertible currency accepted by the claimants.

¶8. (C) Finally, Article 9 of the BIT provides for international arbitration at the International Centre for Settlement of Investment Disputes. The BRV has gone to great lengths in the past to avoid international arbitration. Under the terms of the migration of the oil sector to PDVSA-controlled joint ventures, oil companies in Venezuela supposedly agreed to give up their rights to arbitration. However, as reported in Reftel D, one prominent local law firm believes that oil companies (or any other company for that matter) operating in Venezuela via subsidiaries incorporated in countries with BITs with Venezuela still retain their rights to arbitration.

DUDDY